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10 **UNITED STATES DISTRICT COURT**
11 **EASTERN DISTRICT OF WASHINGTON**

12 STATE OF WASHINGTON, et al.,

13 Plaintiffs,

14 v.

15 UNITED STATES FOOD AND
DRUG ADMINISTRATION, et al.,

16 Defendants.

NO. 1:23-cv-03026

PLAINTIFF STATES' MOTION
TO EXCEED PAGE LIMITS FOR
MOTION FOR PRELIMINARY
INJUNCTION

03/27/2023
Without Oral Argument

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18 The Plaintiff States of Washington, Oregon, Arizona, Colorado,
19 Connecticut, Delaware, Illinois, Nevada, New Mexico, Rhode Island, Vermont,
20 and the Attorney General of Michigan (Plaintiff States) respectfully move,
21 pursuant to Local Civil Rule 7(f)(5), to exceed the default page limits for their
22 contemporaneously-filed Motion for Preliminary Injunction.

1 The Plaintiff States seek this relief because this is a critically important
 2 case of nationwide interest concerning access to abortion care. More than
 3 22 years ago, the United States Food and Drug Administration approved
 4 mifepristone as part of a two-drug regimen to end an early pregnancy based on
 5 its thorough and comprehensive review of the scientific evidence. Since this
 6 regimen was approved in 2000, mifepristone has been used approximately
 7 5.6 million times in the United States and is a safe and proven early abortion
 8 option. But FDA has continued to hamper access to this critical, time-sensitive
 9 drug by singling out mifepristone—and the people in the Plaintiff States who rely
 10 on it for their reproductive health care—for a unique set of restrictions known as
 11 a Risk Evaluation and Mitigation Strategy (REMS). The amended REMS for
 12 mifepristone, which went into effect on January 3, 2023, unduly burdens
 13 providers from prescribing, pharmacies from dispensing, and patients from
 14 accessing mifepristone. On February 23, 2023, the Plaintiff States filed a
 15 Complaint challenging the amended REMS as arbitrary and capricious and
 16 unconstitutional. The Plaintiff States now move for a preliminary injunction.

17 Excess page limitations. The Plaintiff States have good cause to exceed the
 18 10-page limit set forth in the local rules. LCivR 7(f)(5), (f)(2); *see also Pac.*
 19 *Aerospace & Elecs., Inc. v. Taylor*, 295 F. Supp. 2d 1188, 1204 n.29 (E.D. Wash.
 20 2003) (“Preliminary injunction motions often justify treatment as dispositive
 21 motions in determining the applicable rule for length of briefs.”). While
 22

1 Plaintiff States have attempted to be as concise as possible, the breadth and
2 complexity of this multi-state lawsuit has necessitated substantial briefing to
3 ensure the issues are adequately presented to the Court.

4 The amended REMS—and the underlying statutory and factual
5 background—is intricate and multi-faceted. Fully informing the Court of its
6 requirements and far-reaching implications required significant detail. Further,
7 the required showings of likelihood of success on the merits and irreparable harm
8 under Fed. R. Civ. P. 65 are complex, particularly in this factual and statutory
9 context. Adequately briefing the Court on these issues required the
10 Plaintiff States to provide detailed—and often highly technical—explanations as
11 to the role of mifepristone in reproductive health care, the statutory requirements
12 for FDA regulations, the scientific evidence before the FDA, and the impact of
13 the amended REMS on hospitals, clinics, pharmacies, and patients across the
14 nation. In addition, the Plaintiff States have filed declarations from a multitude
15 of fact and expert witnesses in support of their motion for preliminary injunction,
16 and incorporating this testimony required additional pages.

17 Opposing party's position. As of this date, no counsel for the Defendants
18 have appeared in this case. Consequently, the Plaintiff States are unable to state
19 the Defendants' position on this motion as required by LCivR 7(f)(5).

20 For the foregoing reasons, the Plaintiff States respectfully request that the
21 Court grant this motion and consider the Plaintiff States'

22

1 contemporaneously-filed Motion for Preliminary Injunction as filed. A proposed
2 order is submitted herewith.

3 DATED this 24th day of February 2023.

4 ROBERT W. FERGUSON
5 Attorney General

6 /s/ Kristin Beneski

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**Application for pro hac vice admission
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**Application for pro hac vice admission
forthcoming*

CERTIFICATE OF SERVICE

I hereby certify that on February 24th, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which in turn automatically generated a Notice of Electronic Filing (NEF) to all parties in the case who are registered users of the CM/ECF system. The NEF for the foregoing specifically identifies recipients of electronic notice. I hereby certify that I have mailed by United States Postal Service, and sent via electronic mail, the document to the following non-CM/ECF participants:

United States Food and Drug Administration
Chief Counsel, Food and Drug Administration
ATTENTION: LITIGATION
White Oak Building 31, Room 4544
10903 New Hampshire Ave., Silver Spring, MD 20993-0002
OC-OCC-FDA-Litigation-Mailbox@fda.hhs.gov

Robert M. Califf, Commissioner
Chief Counsel, Food and Drug Administration
ATTENTION: LITIGATION
White Oak Building 31, Room 4544
10903 New Hampshire Ave., Silver Spring, MD 20993-0002
OC-OCC-FDA-Litigation-Mailbox@fda.hhs.gov

I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

Department of Health and Human Services
c/o General Counsel
200 Independence Avenue, S.W.
Washington, D.C. 20201

1 Xavier Becerra, Secretary
2 c/o General Counsel
3 Department of Health and Human Services
4 200 Independence Avenue, S.W.
5 Washington, D.C. 20201

6 I hereby certify that I have caused the document to be served by
7 hand-delivery to the following non-CM/ECF participants:

8 U.S. Attorney Vanessa R. Waldref
9 United States Attorney's Office
10 Eastern District of Washington
11 920 W. Riverside Avenue, Suite 340
12 Spokane, WA 99201

13 I declare under penalty of perjury under the laws of the State of
14 Washington and the United States of America that the foregoing is true and
15 correct.

16 DATED this 24th day of February 2023, at Seattle, Washington.

17 /s/ Kristin Beneski
18 KRISTIN BENESKI, WSBA #45478
19 First Assistant Attorney General
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